

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10648 of 1998

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

SOEB AHMED @ PAPPU EJAJ AHMED SIDDIKI

Versus

COMMISSIONER OF POLICE

Appearance:

MR JK PARMAR for Petitioner

MS PUNANI AGP for Respondent No. 1, 2, 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 21/07/1999

ORAL JUDGEMENT

Heard the learned advocates for the respective parties.

The petitioner challenges the order of preventive detention dated 13th October, 1998, made by the Commissioner of Police, Ahmedabad City, under the powers conferred upon him under sub-section (1) of section 3 of the Gujarat Prevention of Anti Social Activities Act,

1985 (hereinafter referred to as 'the Act').

Along with the order of detention, the petitioner has been served with the grounds of detention. It is alleged that the petitioner is a 'dangerous person' within the meaning of section 2 (c) of the Act, and his activities are prejudicial to the maintenance of public order. The Detaining Authority has relied upon three offences punishable under Chapter-XVII of the IPC registered against the petitioner. The said offences have been registered in the month of November and December 1997. However, the petitioner could not be arrested in respect of the said offences until the month of August, 1998. In each of the said offences, the petitioner was released on bail. After the petitioner's release on bail, the concerned authority has recorded statements of two witnesses on 10th October, 1998 and 12th October, 1998. Both the witnesses have stated that on refusing to submit to the demand of the petitioner, the petitioner had dragged the witness to a public place and had beaten him. The petitioner had threatened the people gathered on the road by brandishing a knife. Relying upon the said statements, the petitioner's activities are held to be prejudicial to the public order.

It appears that the statements of the witnesses were recorded after the petitioner was arrested in the above referred three offences and was released on bail in each of the said three cases. The said witnesses were summoned before the Detaining Authority on 14th October, 1998, and the Detaining Authority had examined the genuineness of the fear expressed by the witnesses. However, there is nothing on record to show that the credibility of the witnesses or the correctness of the contents of the statements were ever examined either by the proposing authority or by the Detaining Authority. The proximity of the dates of recording of the statements of the witnesses, their verifications and the order of detention, makes it doubtful whether the sponsoring authority could have examined the credibility of the witnesses and the correctness of the statements made by them. In absence of any material to show that the credibility of the witnesses was examined as aforesaid, the said statements could not have been relied upon by the Detaining Authority. Besides, even the Detaining Authority, in the grounds of detention, has not recorded his subjective satisfaction in this respect. In absence of specific mention with regards to the subjective satisfaction of the Detaining Authority or any other contemporaneous evidence, it would be unfair to rely upon

the statements of the witnesses to take away the personal liberty of a citizen. The order of detention is, therefore, vitiated.

Petition is, therefore, allowed. The impugned order dated 14th October, 1998 (Annexure-A to the petition) is quashed and set aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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JOSHI